

Burma Ordered to Prevent Genocide Against Rohingya

January 27, 2020

The International Court of Justice (ICJ) on January 23, 2020, ordered Burma to undertake [four “provisional measures”](#) to prevent genocidal acts against the Rohingya and “prevent the destruction and ensure the preservation of evidence related to allegations of [genocidal] acts.”

The ICJ order comes two days after Burma’s [Independent Commission of Enquiry \(ICOE\) submitted its final report](#) to Burma’s President Win Myint, indicating that while it had obtained evidence that “war crimes and serious human rights violations” may have occurred during the 2017 “clearance operations” in Rakhine State, it found no indications of genocidal intent.

The International Criminal Court (ICC) is also investigating the [alleged forced deportation](#) and other related crimes against the Rohingya. While the ICJ order has no legal effect on U.S. relations with Burma, Congress has been and continues to be attentive to the issue of Rohingya refugees and human rights violations committed by Burmese security forces and other actors.

The ICJ Order

The ICJ order responds to a [case brought by The Gambia \(Gambia\) against Burma \(Myanmar\)](#) under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). Gambia requested that Burma be required to take six provisional measures. Of the six, four were ordered by the ICJ, which require the Government of Burma to:

- “Take all measures within its power” to prevent genocidal acts against Rohingya;
- Ensure Burma’s military and “any irregular armed units” under military “control, direction or influence” do not commit or conspire to commit genocidal acts;
- Take “effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of” genocidal acts; and

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- Submit a report to the ICJ within four months, and every six months thereafter, on “all measures taken to give effect to this Order.”

Notably, in its order, the ICJ made no mention of the fifth measure requested by Gambia, that Burma “be ordered to grant access to, and cooperate with, all United Nations fact-finding bodies that are engaged in investigating alleged genocidal acts against the Rohingya.” The ICJ also decided that the sixth measure, that neither Gambia nor Myanmar take an action to aggravate the dispute, was not necessary. In its initial presentation to the ICJ, Burma opposed all six measures. In its decision, the ICJ extensively cited the reports of the [U.N. Independent International Fact-Finding Mission on Myanmar](#) (IIFMM) that found evidence of the government’s continuing involvement in genocide, crimes against humanity, and war crimes against the Rohingya and other ethnic minorities in Burma. Following the ICJ’s ruling, the Burmese Ministry of Foreign Affairs issued a statement acknowledging the ICJ’s decision, but [reasserted that there had been “no genocide in Rakhine.”](#)

The ICOE Report

[President Win Myint established the ICOE in July 2018](#) to “investigate the allegations of human rights violations and related issues, following the terrorist attacks by ARSA” (Arakan Rohingya Salvation Army). The ICOE’s final report presents a different picture of events in Rakhine State than that of the IIFMM, including fewer civilian deaths and “no credible statements on allegations of gang rape.” The ICOE also attributed the exodus of Rohingya to ARSA’s actions, and “found few credible witness statements to indicate that Myanmar’s Defense Services (MDS) or Myanmar’s Police Force directly forced or expelled the Rohingya to Bangladesh.” The ICOE did determine that “war crimes and serious human rights violations may have occurred in the form of disproportionate use of force by some members of Myanmar’s Defense Services and Police Force.” The ICOE report included 22 recommendations, including that the MDS “conduct the necessary investigations and seek accountability for responsible military personnel” concerning alleged crimes described in the ICOE’s report.

On January 22, 2020, the [Office of Attorney General Htun Htun Oo announced](#) that it will “coordinate and cooperate with the relevant departments and organizations to ensure further criminal investigations and, where the evidence is compelling, prosecutions.” [The MDS said](#) it would also act on alleged abuses committed by its troops in Rakhine State in 2017.

ICC Investigation

In addition to the ICJ case, alleged crimes against the Rohingya are also the subject of an investigation by the International Criminal Court (ICC). In July 2019, the [Prosecutor of the ICC requested authorization](#) to initiate investigations into the alleged forced deportation of the Rohingya into Bangladesh, and other related crimes. Because Burma is not a party to the ICC, the court’s jurisdiction is based on the crimes (deportation) within the territory of Bangladesh, which is a State party. On November 14, 2019, the [ICC’s Pre-Trial Chamber III authorized](#) the investigation. Burma has refused to cooperate with the ICC investigation, contesting ICC jurisdiction. On January 20, 2020, [Pre-Trial Chamber III ordered the ICC’s Registry](#) “to establish, as soon as practical, and in consultation and collaboration with the Prosecutor, a system of public information and outreach activities with the affected communities” to assist with the investigation.

Implications for Congress

The status of the Rohingya in Bangladesh and Burma and accountability for human rights violations committed by Burmese security forces has been and remains a concern for Congress. The Further

Consolidated Appropriations Act, 2020 (P.L. 116-94) provides funding for the return of Rohingya and other displaced ethnic minorities to Burma “only if such returns are voluntary and consistent with international law.” The Allowing for the Safe Return of Rohingyas to Burma Act of 2019 (H.R. 4392) would take away Burma’s eligibility to the U.S. Generalized System of Preference program until the Government of Burma:

1. allows for the safe, voluntary, and dignified return of Rohingya refugees;
2. has taken the necessary steps to provide Burmese citizenship to such Rohingya refugees; and
3. has addressed the root causes of the crisis in Rakhine State.

The Burma Unified through Rigorous Military Accountability Act of 2019 (H.R. 3190) and the Burma Human Rights and Freedom Act of 2019 (S. 1186) would make accountability for war crimes, crimes against humanity, and genocide in Burma; the restoration of full citizenship for the Rohingya; and the return of the displaced Rohingya “guiding principles” of U.S. policy.

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